

Heimdal, Monica

From: John Brunini [jbrunini@brunini.com]
Sent: Friday, September 20, 2013 9:29 AM
To: 'Cimarosti, Daniel E NWO'
Cc: Mikulecky, Matthew J NWO; Heimdal, Monica; Crooke, Patsy J NWO; kb@geomap.tv; Kato, Linda; Chris Hughes (chh222@gmail.com)
Subject: RE: Restoration Plan and Contact (UNCLASSIFIED)
Attachments: restoration plan; Final Administrative Order on Consent (01638667).pdf; Approved Wetland Restoration Plan (01638665).pdf

Dan and Matt,

Thank you both very much for your time this morning. Attached to this email, please find three items.

1. The first attachment is a copy of an email received from EPA Region 8 Attorney Linda Kato dated yesterday confirming that EPA has approved BIP 40's restoration plan and is awaiting receipt from BIP 40 of the final Administrative Order on Consent.
2. The second attachment is a copy of BIP 40's final restoration plan which has been approved by EPA Region 8.
3. The last item is a copy (at this point executed only by BIP 40) of the final Administrative Order on Consent for which we are awaiting EPA signature. We believe EPA will receive the original executed by BIP 40 via FedEx today.

As we discussed this morning, once I receive a final, fully executed version of the Administrative Order on Consent, I will send you a copy by email and give you a call. As Ms. Kato states in her email of yesterday, we anticipate this to occur early next week. Once I provide that to you and call you, I understand that you will provide verbal authorization for BIP 40 to proceed with the restoration activities under NWP 32 and you will follow that verbal authorization with a written authorization to proceed.

Dan and Matt, thank you both very much for your cooperation and assistance in this matter. If you have any problems opening the attachments or any questions regarding this matter, please feel free to call me. Thanks again.

JB

John A. Brunini
E: <mailto:jbrunini@brunini.com>

P: 601-973-8712 F: 601-960-6902

Brunini, Grantham, Grower & Hewes, PLLC
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Confidentiality Statement

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-----Original Message-----

From: Cimarosti, Daniel E NWO [<mailto:Daniel.E.Cimarosti@usace.army.mil>]
Sent: Friday, September 20, 2013 7:49 AM
To: John Brunini
Cc: Mikulecky, Matthew J NWO; Heimdahl, Monica; Crooke, Patsy J NWO
Subject: Restoration Plan and Contact (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Mr. Brunini,

As we discussed, if I am out of the office please contact Matt Mikulecky for confirmation of NWP 32 once EPA determines compliance with their order.

Classification: UNCLASSIFIED
Caveats: NONE

**IN THE MATTER OF: BIP 40, LLC
ADMINISTRATIVE ORDER ON CONSENT**

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant**

Date

**Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice**

**BIP 40, LLC
Respondent**

9-19-13

Date



**Vern Haugen
Managing Member
BIP 40, LLC**

Heimdal, Monica

From: Kato, Linda <Kato.Linda@epa.gov>
Sent: Thursday, September 19, 2013 11:51 AM
To: John Brunini
Cc: Heimdal, Monica
Subject: restoration plan

John – we've received the finalized restoration plan. As soon as we get the signed original AOC from you, we can get it signed here and filed. I anticipate that will occur early next week, if we get the original from you tomorrow or Monday. As soon as it is filed, your client can commence the restoration work. Please call if there are any problems.

Linda S. Kato

Enforcement Counsel

U.S. EPA Region 8

Mail Code ENF-L

1595 Wynkoop

Denver, CO 80202

(303) 312-6852

kato.linda@epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:

**BIP 40, LLC
P.O. Box 51568
Casper, WY 82605**

Respondent.

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No.

I. INTRODUCTION

This Administrative Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Respondent BIP 40, LLC. The Consent Order concerns the implementation and completion of actions required to restore the environmental damage caused by allegedly illegal discharges of dredged and/or fill material into wetlands adjacent to Camp Creek at the Williston RV Village Resort (the Site) in Williston, Williams County, North Dakota.

II. STATUTORY AUTHORITY

This Consent Order is issued pursuant to the authority vested in the Administrator of the EPA by sections 308 and 309 of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319, and by the Administrator delegated to the Regional Administrator of the EPA Region 8 and redelegated by the Regional Administrator of the EPA Region 8 to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice. The Consent Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a) which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

III. PARTIES BOUND

This Consent Order shall apply to and be binding upon the EPA and upon Respondent, its officers, directors, agents, successors, and assigns. The signatories to this Consent Order certify that they are authorized to execute and legally bind the party they represent to this Consent Order. No change in the ownership or corporate status of Respondent or of the Site shall alter Respondent's responsibilities under this Consent Order unless the EPA, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities. Additionally, at least 30 calendar days prior to such transfer, Respondent shall notify the EPA at the address specified in paragraph 30 of this Consent Order.

IV. STATEMENT OF PARTIES

The following FINDINGS OF FACT AND OF VIOLATION are made solely by the EPA. In signing this Consent Order, Respondent neither admits nor denies the FINDINGS OF FACT AND OF VIOLATION. As such, and without any admission of liability, Respondent consents to issuance of this Consent Order and agrees to abide by all of the conditions herein. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including, but not limited to, any right of judicial review of this section 309(a)(3) Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708. Respondent further agrees not to challenge the jurisdiction of the EPA or the FINDINGS OF FACT AND OF VIOLATION below in any proceeding to enforce this Consent Order or in any action under this Consent Order.

V. FINDINGS OF FACT AND OF VIOLATION

1. Respondent BIP 40, LLC, is and was at all times relevant to the Consent Order a corporation organized under the laws of the State of Wyoming. Respondent maintains its principal office at 1300 Venture Way, Casper, Wyoming.
2. In October of 2011, Respondent began work to acquire a 117-acre parcel for the purposes of developing an RV park at the Site.
3. Respondent retained SBL Associates, Inc. (SBL), a civil engineering firm, to prepare a grading and improvement plan. In July of 2012, grading of the Site commenced. All mass grading was completed sometime in September or October of 2012.
4. Respondent states that during the grading process, SBL informed Respondent that an area in the northeast portion of the property likely contained jurisdictional wetlands and that this area was the only area on the property containing jurisdictional wetlands. Respondent prohibited contractors from placing fill in this portion of the property.
5. On March 13, 2013, SBL informed Respondent that the northwest portion of the property, which had already been impacted by grading activities, was possibly a wetland.
6. Respondent engaged a consulting firm, Carlson McCain, Inc. (Carlson McCain), to conduct a site investigation and wetland delineation of the Site.
7. As demonstrated by the wetland delineation report produced by Carlson McCain, construction activities at the Site impacted approximately 4.5 wetland acres of a former oxbow/meander channel of Camp Creek and fill material approximately 10 to 15 feet in depth was placed on the wetland area. Wetland functions have also been eliminated.

8. The impacted wetlands at the Site are adjacent to and directly abut Camp Creek, and are hydrologically connected to Camp Creek. Camp Creek is a tributary to the Little Muddy River, which is a tributary to the Missouri River, a traditional navigable water.
9. The wetlands adjacent to and abutting Camp Creek, referenced in paragraphs 7 and 8 of this Consent Order, are and were at all relevant times "waters of the United States" within the meaning of 33 C.F.R. § 328.3(a) and therefore "navigable waters" within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
10. The discharges of fill material described in paragraph 7 of this Consent Order resulted from the use of common earthmoving vehicles and equipment, which were operated by Respondent or persons acting on its behalf.
11. Respondent is a "person" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
12. The discharged dredged and/or fill material referenced in paragraph 7 of this Consent Order is and was at all relevant times "dredged material" and "fill material" within the meaning of 33 C.F.R. § 323.2(c) and (e), respectively, and "pollutants" within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
13. The vehicles and equipment referenced in paragraph 10 of this Consent Order are and were at all relevant times each a "point source" within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
14. The placement of dredged and/or fill material into wetlands adjacent to and abutting Camp Creek constitutes the "discharge of pollutants" within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

15. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.
16. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.
17. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.
18. Respondent was not authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraphs 3 and 7 of this Consent Order.
19. The activities conducted by Respondent and its agents as described in paragraphs 3 and 7 of this Consent Order violate section 301 of the CWA, 33 U.S.C. § 1311.
20. Activities to be carried out under this Consent Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). Restoration is appropriate and required to address the actual and potential harm to water quality, aquatic habitat, and wildlife habitat, as well as other functions and values, caused by Respondent's unpermitted activities.
21. These preceding FINDINGS OF FACT AND OF VIOLATION and the ORDER FOR COMPLIANCE below have been made after consultation and coordination with the Corps' Omaha District.

VI. ORDER FOR COMPLIANCE

Based upon the foregoing FINDINGS OF FACT AND OF VIOLATION and pursuant to the authority vested in the Administrator of the EPA under CWA sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, it is hereby ORDERED and AGREED:

22. Respondent shall immediately terminate all discharges of dredged and fill material at the Site, now and in the future, into waters of the United States unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in the discharge of dredged or fill material into waters of the United States.
23. Respondent shall conduct removal and restoration activities for impacts to waters of the United States resulting from the unauthorized discharges of dredged and/or fill material at the Site in accordance with the schedule and other requirements set forth in the Wetland Restoration Plan (Plan) appended herein as Attachment A.
24. This Consent Order is not a permit or an authorization to discharge dredged or fill material, storm water, or any other pollutant into waters of the United States. Respondent shall consult with the Corps and the North Dakota Department of Health (NDDH) at the addresses and telephone numbers below to determine if any work to be performed pursuant to this Consent Order requires a permit from the Corps under section 404 of the CWA, 33 U.S.C. § 1344, or from NDDH under section 402 of the CWA, 33 U.S.C. § 1342. If any such permit is required, Respondent shall obtain such

permit(s) and provide a copy or copies to the EPA pursuant to paragraphs 25 and 30 of this Consent Order prior to initiating any work that is to be performed pursuant to this Consent Order.

U.S. Army Corps of Engineers
North Dakota Regional Office
1513 S. 12th Street
Bismarck, ND 58504
Telephone: 701-255-0015

North Dakota Department of Health
Division of Water Quality
918 East Divide Avenue, 4th Floor
Bismarck, ND 58501-1947
Telephone: 701-328-5210

25. Respondent must make a timely application for each permit necessary to implement the Plan and for conducting removal and restoration activities in accordance with the Plan, including the schedule specified therein, with all granted permits, and with all applicable laws. If any permits are necessary, Respondent shall demonstrate that all permits have been granted by providing copies of all such permits, and any amendments thereto, to the EPA within seven calendar days of issuance of each permit.
26. In addition to the notification requirements set forth in paragraph 24 of this Consent Order, after issuance of any Corps authorization for removal and restoration work, Respondent shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.

27. All removal and restoration activities conducted pursuant to the Plan and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in wetland restoration. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to the EPA within 14 calendar days of the effective date of this Consent Order and prior to commencement of removal and restoration activities.
28. Respondent shall implement the Plan and then commence all removal and restoration activities in accordance with the Plan, including the time frames specified therein, and all granted permits.
29. Carlson McCain or GeoMap, LLC shall supervise all work performed pursuant to the Plan and shall be present at the Site during all critical times unless otherwise approved in advance by the EPA.
30. Respondent shall submit two copies of the Plan, all permits, notifications, and related correspondence to:

Monica Heimdal, 8ENF-W
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
Telephone: 303-312-6359

A copy of the Plan also shall be provided to the Corps at the address noted in paragraph 24 of this Consent Order.

31. All plans, deliverables, reports, specifications, schedules, and attachments required by this Consent Order are, upon approval by the EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved plans, deliverables, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Consent Order and subject to EPA enforcement.
32. A lease, sublease, or transfer of the Site shall not relieve Respondent, its officers, directors, agents, successors, and assigns of any responsibility in the Consent Order unless the EPA, Respondent, and

the lessee, sublessee, or transferee agree in writing to allow the lessee, sublessee, or transferee to assume such responsibility. Additionally, at least 30 calendar days prior to such lease, sublease, or transfer, Respondent shall notify the EPA regarding the details of the lease, sublease, or transfer at the address specified in paragraph 30 of this Consent Order.

33. Respondent shall allow, or use its best efforts to allow, access by any authorized representative of the EPA or its contractors, the Corps, the NDDH, the North Dakota Game and Fish Department, the Natural Resources Conservation Service, and the U.S. Fish and Wildlife Service, upon proper presentation of credentials, to the Site and to all records relevant to this Consent Order for any of the following purposes:
 - a. To inspect and monitor progress of the activities required by this Consent Order;
 - b. To inspect and monitor compliance with this Consent Order; and
 - c. To verify and evaluate data and other information submitted to the EPA.
34. This Consent Order shall in no way limit or otherwise affect the EPA's authority, or the authority of any other governmental agency, to enter the Site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.
35. This Consent Order shall be effective upon the date Respondent receives a fully executed copy of this Consent Order.
36. Issuance of this Consent Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to this Consent Order.

37. The EPA agrees to submit all notifications and correspondence related to the Consent Order to:

Mr. Christopher H. Hughes
Member
BIP 40, LLC
1569 Highway 15 South Bypass
Louisville, MS 39339

Mr. Kyle Brock
GEOMAP, LLC
6602 E. Lone Mountain Road N.
Cave Creek, AZ 85331

Mr. John A. Brunini
Counsel for Respondent
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, MS 39201

38. Any party hereto may, by notice, change the address to which future notices shall be sent or the identities of the persons designated to receive notices hereunder.
39. If an event causes or may cause delay in the achievement of the requirements of this Consent Order, Respondent shall notify the EPA by telephone or via e-mail as soon as possible and in writing within ten working days from the date Respondent first knew of such event or should have known of such event by exercise of due diligence, whichever is earlier. Respondent's written notice shall specify the length of the anticipated delay, the cause(s) of the delay, the measures taken or to be taken by Respondent to minimize the delay and a timetable by which those measures will be or have been implemented. Notification to the EPA pursuant to this paragraph of any anticipated delay, by itself, shall not excuse the delay or the obligation of Respondent to comply with requirements and deadlines of this Consent Order, unless the EPA grants in writing an extension of the applicable requirement or deadline.

40. If Respondent demonstrates to the EPA's satisfaction that the delay or anticipated delay has been or will be entirely caused by circumstances beyond Respondent's control (or the control of any of Respondent's agents) that Respondent could not have foreseen and prevented despite due diligence, and that Respondent has taken all reasonable measures to prevent or minimize such delay, the EPA may excuse performance or extend the time for performance of such requirement for a period not to exceed the actual delay resulting from such circumstances. The EPA's determination on these matters shall be made as soon as possible and in writing within ten working days after the receipt of Respondent's written notification of the event. The parties agree that changed economic circumstances shall not be considered circumstances beyond the control of Respondent.

41. Respondent understands and acknowledges the following:

- a. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes civil penalties of up to \$37,500 per day for each violation of an order issued by the EPA under section 309 of the CWA, 33 U.S.C. § 1319.
- b. Compliance with the terms and conditions of this Consent Order shall not be construed to relieve Respondent of its obligations to comply with any applicable Federal, state, or local law or regulation.
- c. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Consent Order may subject Respondent to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Consent Order.

**IN THE MATTER OF: BIP 40, LLC
ADMINISTRATIVE ORDER ON CONSENT**

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant**


Date

**Andrew M. Gaydosch
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice**

**BIP 40, LLC
Respondent**

9-19-13

Date



**Vern Haugen
Managing Member
BIP 40, LLC**

EXHIBIT A



ENVIRONMENTAL • ENGINEERING • LAND SURVEYING

September 17, 2013

Mr. John Brunini
Brunini Firm
The Pinnacle Building
190 East Capitol Street, Suite 100
Jackson, MS 39201

Dear Mr. Brunini,

Carlson McCain, Inc. is pleased to submit the Wetland Restoration Plan for your review.

Please call me at 701-595-7004 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads 'Greg W. Meyer'.

Greg Meyer, MS
Ecologist

WETLAND RESTORATION PLAN

Williston Village RV Resort
Section 24, T155N, R101W
Williams County, North Dakota
Project #4554

Prepared for:

Mr. John Brunini
Brunini Firm
The Pinnacle Building
190 East Capitol Street, Suite 100
Jackson, MS 39201

September 17, 2013



600 S. 2nd Street, Suite 105
Bismarck, ND 58504
Tel 701-255-1475
Fax 701-255-1477
www.carlsonmccain.com

ENVIRONMENTAL • ENGINEERING • LAND SURVEYING

**Williston Village RV Resort
Wetland Restoration Plan**

EXECUTIVE SUMMARY

Construction of the Williston Village RV Resort (RV Resort) has impacted a wetland that appears to be connected to Camp Creek. A wetland delineation conducted by Carlson McCain, Inc. determined that 4.5 wetland acres were impacted by construction activities (Carlson McCain, 2013). Removal of the fill materials will restore the wetland to pre-impact conditions.

The RV Resort will remove fill materials to the original surface elevation of the impacted wetland area and restore it to pre-impact conditions which will restore its hydrologic regime. Conventional excavation equipment (dozers, scrapers, and backhoes) will be used to remove the fill materials. Precise construction staking, implementing Storm Water Pollution Prevention Plan (SWPPP) measures, and consistent surveys will ensure the fill materials will be removed to the original wetland surface and limit impacts to the wetland area. Hydrophytic vegetation will be seeded in and wetland hay from adjacent wetlands will be spread on the original wetland surface to aid in the establishment of hydrophytic vegetation.

The impacted wetland is located in the NE¼ of Section 24, T155N, R101W. The amount of wetland impacts and restoration details are summarized in Table 1.

Table 1. Summary of Wetland Impact and Restoration Site

Impacted Wetland Location	Williams County	Section 24, T155N, R101W
Project Wetlands	PEMA/PEMC (Cowardin 1979)	
Wetland Impact	4.5 Acres	
Restoration Site	Williams County	Section 24, T155N, R101W
Type of Restoration	Remove fill materials from impacted wetland area to original surface elevations	
Fill Types (Amount)	Topsoil (30,000 cubic yards) and clean fill (118,000 cubic yards)	
Restoration Wetland	4.5 acres with seasonal hydrologic regime	
Years of Monitoring	5 years	

The restored wetland will be monitored for up to 5 years but may be terminated prior if the U.S. Environmental Protection Agency (EPA) deems the restoration successful. A monitoring plan is also included in this Restoration Plan.

Williston Village RV Resort Wetland Restoration Plan
Section 24, T155N, R101W
Williams County, North Dakota

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1.0 INTRODUCTION

Construction of the Williston Village RV Resort (RV Resort) impacted 4.5 wetland acres by filling a former oxbow/meander channel of Camp Creek (Appendix A). Camp Creek flows east through the northern portion of the RV Resort property toward the Little Muddy River. Fill was placed into the former oxbow/meander channel during construction activities. A wetland delineation that evaluated historic aerial photos and current field conditions determined the area of impact. This restoration plan identifies the project impacts to the wetland and describes the removal of those impacts.

The wetland is located on the north edge of the RV Resort property near Williston, North Dakota, in the NE¼ of Section 24, T155N, R101W (Appendix A).

Table 2. Impacted Wetland Area

Wetland	NWI	Acres*	Wetland Impact Acres
Wetland 1	PEMA/PEMC	4.5	4.5
		Total	4.5

*Acreage estimated from wetland delineation contained in Wetland Delineation Report (Carlson McCain, 2013).

The RV Resort will conduct and oversee the restoration of the impacted wetland.

2.0 EXISTING SITE CONDITIONS

The impacted wetland is located on the RV Resort property and is classified as Palustrine Emergent Temporarily Flooded (PEMA) and Palustrine Emergent Seasonally Flooded (PEMC). The wetland area was a former oxbow/meander channel of Camp Creek and is located in the Little Muddy River watershed. The impacted wetland area has been determined at 4.5 acres.

2.1 Impacted Wetland Physical Conditions

The impacted wetland had a seasonal hydrologic regime. Its hydrology was influenced by surface water flow and by groundwater (approximate 9 inches in depth as varies seasonally from 0-18 inches in depth) flow through the site. The impacted wetland contains Harriet soils and was vegetated with saline tolerant species. Alkali grass (*Puccinellia nuttalliana*), saltgrass (*Distichlis spicata*), and foxtail barley (*Hordeum jubatum*) are prevalent along the edge of the impacted wetland area. The uplands surrounding the impacted wetland area consist of Williams-Zahl loams which contain an average depth of groundwater to be greater than 80 inches. The depth of groundwater in the area has been estimated to be near an elevation of 1880 feet above sea level and this is consistent with the surface of the impacted wetland area.

Approximately 148,000 cubic yards of fill materials were inadvertently placed in the wetland area. Approximately 30,000 cubic yards of upland vegetated topsoil was placed on the original wetland surface and 118,000 cubic yards of clean fill was placed on the topsoil fill materials. The clean fill materials were identified as sandy lean clay glacial till and/or sandy coarse alluvium.

The vegetated topsoil fill materials consist of Williams-Zahl loams, (surficial clayey sand) which were placed on the original wetland surface. Clean fill materials were placed on top of the vegetated topsoil fill material.



Photograph 1. View of the fill materials located within the downstream portion of the impacted wetland area.



Photograph 2. View of upstream edge of the impacted wetland area. Surface water accumulated in the upstream portion due to the fill materials.

3.0 PROPOSED SITE CONDITIONS

3.1 Restoration Activities

Restoration activities will include removal of fill materials to the original elevations of the impacted wetland surface. The original surface elevations range from 1882.98 (upstream edge) to 1876.95 (downstream edge). Prior to impact, water flowed east through the wetland towards Camp Creek.

Approximately 148,000 cubic yards of material will be removed to restore the impacted wetland to its original ground surface. Conventional excavation equipment (dozers, scrapers, backhoes) will be used to remove fill materials. The use of conventional excavation equipment will ensure the restoration is completed quickly which will allow the restored site to quickly resume wetland functions. The excavation equipment will access the impacted wetland area from the south across upland areas. Excavated fill materials will be placed on the surrounding upland areas to the south and east of the impacted wetland area (Appendix A).

The boundaries of the fill area will be staked by surveyors to limit impacts to adjacent wetland areas. Grade elevations of the depth of fill to be removed will be staked on a 100 foot grid across the area of fill. Surveys and staking of grade elevation of the depth of fill will be conducted routinely to insure that all fill materials are removed and over-excavation of the impacted wetland area does not occur.

Best management practices will be implemented by the contractor while removing fill materials from the impacted wetland area. Storm Water Pollution Prevention Plan (SWPPP) measures will be implemented to limit impacts to adjacent wetlands (Appendix B). Additional measures will include the use of construction mats or low ground pressure equipment if the site becomes saturated or as the excavation approaches final grade to reduce compaction of the impacted wetland area. Silt fences placed along the upstream and downstream wetland edge will be removed following the excavation of the fill materials. Additional silt fences will be placed at the base of the graded slopes following the removal of the fill materials to keep sediment from the graded slopes from eroding into the wetland. These silt fences will be left in place for a minimum of three years or until the graded slopes are stable and vegetated.

The equipment used, excavation activities and grade elevation staking will be inspected daily by Mr. Kyle Brock and/or Mr. John Reeves (onsite supervisors).

Grading of the adjacent slopes will also be conducted during the removal of the fill materials. At least four inches of topsoil will be spread on the graded slopes to aid the growth of native vegetation species.

3.2 Restoration of Wetland Functions

Restoration of the impacted wetland's hydrologic regime will be accomplished by removing fill materials to the original surface elevations. Removal of the fill materials will allow surface run-off, high water from Camp Creek, and groundwater to inundate and saturate the wetland area.

**Williston Village RV Resort
Wetland Restoration Plan**

Vegetation within the wetland area will be re-established by two methods: 1) seeding Nuttall alkaligrass and 2) spreading wetland hay across the wetland surface. Nuttall alkaligrass seeds will be broadcast across the surface of the wetland and then covered with wetland hay. The wetland hay will consist of Nuttall's alkaligrass, saltgrass, and foxtail barley. The wetland hay will provide an additional seed source to the wetland area and help to control erosion. The wetland hay will be collected from adjacent wetland areas along Camp Creek. Restoration of hydrology will also aid in re-establishing hydrophytic vegetation by allowing propagules to naturally flow into the wetland from high flows of Camp Creek. Table 1 indicates the proposed seeding mixture.

Table 1. Seeding mixture for restored wetland.

Species*	Mixture (%)	Pure Live Seed (Lbs/Ac)	Acres	Total Pure Live Seed (Lbs)
Nuttall alkaligrass	100%	1.5	4.5	6.8

*Seeding scheduled for fall of 2013 following removal of fill materials.

Native vegetation species will be seeded into the graded slopes adjacent to the wetland. Straw wattles will be installed on and straw chaff will be spread upon the seeded slopes to decrease erosion and aid in the establishment of vegetation on them. The vegetation will control erosion, reduce sedimentation, and provide wildlife habitat. The table below indicates the seeding mixture to be planted upon the site. The seed used to re-establish vegetation on the restoration site will be obtained from local plant sources.

Table 2. Seeding mixture for slopes adjacent to the restored wetland.

Species**	Mixture (%)	Pure Live Seed (Lbs/Ac)	Acres	Total Pure Live Seed (Lbs)
Little Bluestem	25%	1.50	2.0	3.0
Western Wheatgrass	25%	3.00	2.0	6.0
Needle and Thread	20%	2.85	2.0	5.7
Switchgrass	15%	0.79	2.0	1.6
Dotted Gayfeather	5%	0.60	2.0	1.2
Stiff Sunflower	5%	0.19	2.0	0.4
Purple prairieclover	3%	0.17	2.0	0.3
Purple Coneflower	2%	0.27	2.0	0.5

**Seeding should be conducted between May 1 and June 15, 2014.

3.3 Noxious Weed Species Management

Mechanical controls will be used to manage noxious weed species if they become prevalent within the restored wetland and adjacent slopes. The restoration site will be monitored annually by the RV Resort and appropriate steps will be taken to control noxious weeds. Noxious weeds identified by the North Dakota state list will be managed. Williams County does not list any additional noxious weeds.

**Williston Village RV Resort
Wetland Restoration Plan**

Plants identified as noxious weeds include:

- Absinth wormwood
- Canada thistle
- Diffuse knapweed
- Leafy spurge
- Musk thistle
- Purple loosestrife
- Russian knapweed
- Spotted knapweed
- Yellow toadflax
- Dalmation toadflax
- Salt cedar

4.0 MONITORING PLAN

The restored wetland requires subsequent monitoring of its hydrology and vegetation to ensure it is functioning correctly. The restored wetland will be evaluated with wetland criteria as identified in the *Great Plains Regional Supplement to the 1987 Manual (Version 2.0)* (USACE 2010) and *National Wetland Plant List* (Lichvar 2012).

Monitoring of the restoration site will be conducted for five years but may be terminated prior if the U.S. Environmental Protection Agency (EPA) deems the restoration successful.

4.1 Monitoring Methods

Monitoring of the restored wetland will consist of a field visit, a monitoring report, and follow-up to any questions or suggestions from regulatory personnel. Monitoring will be performed midway and near the end of the first and second growing seasons following removal of the fill materials. Subsequent monitoring will be conducted on an annual basis during the month of August. The restored wetland will be evaluated by the presence of indicators of wetland criteria, i.e., hydrology, and hydrophytic vegetation (hydric soils are already present) at representative observation points located along a sampling transect. The spatial location of the observation points and the photo points will be collected during the initial monitoring effort with a GPS to ensure that the same locations are evaluated during subsequent monitoring visits.

4.1.1 Photo Points

Photo points are a specified location in which field photographs will be taken. Photographs taken from a specified location and consistent direction will provide a visual account of the restoration and development of the restored wetland.

Photo points will be established in strategic locations in order to document the changes occurring within the restored wetland. The proposed locations and directions of the photo points can be seen in (Appendix A). The photo points will be marked with a metal stake and the spatial locations will be collected with a GPS. Photographs taken from these locations will have consistent camera settings and a documented viewing direction. Photo identification cards with pertinent information to the photo point will be placed in the photograph's field of view. Information documented on the photo identification card will include:

- Unique photo point identification
- Photographer's initials
- Date and time
- Magnetic declination
- Location

**Williston Village RV Resort
Wetland Restoration Plan**

4.1.2 Wetland Vegetation

Wetland vegetation composition will be evaluated at each observation point following the guidelines set forth by the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2.0)* (USACE 2010). Areal cover of all vegetation species and percent bare soil will be evaluated within a 1 meter squared quadrat at each observation point. An overall vegetation species list of the restored wetland will be compiled with species noted at the observation points and those observed while traversing between them. The restored wetland will be surveyed for the presence of noxious weeds. The adjacent seeded slopes will be evaluated for the presence of noxious weeds and overall presence/growth of the seeded species.

4.1.3 Wetland Hydrology

Wetland hydrology indicators will be evaluated at each observation point following the guidelines set forth by the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2.0)* (USACE 2010). Hydrology indicators will also be identified while traversing between observation points.

4.2 Problem Areas

Problem areas will be identified and documented during the monitoring visits. Photographs and notes detailing each problem area will be collected during the field monitoring. Problem areas may involve erosion, areas barren of vegetation, patches of noxious weeds, etc.

4.3 Monitoring Report

Monitoring reports will be completed after each monitoring visit and submitted. Each report will describe the environmental conditions at the site and assess the relative success or failure of restoration efforts. The report will include:

- Name and contact information of permittee, point of contact, and field observer(s)
- Name of person conducting monitoring reports and dates of monitoring visits
- Directions to and map of mitigation area
- Summary paragraph describing the project's purpose, environmental conditions at the site, and restoration action
- Timeline of restoration activities and final date of completion
- Photographs and a narrative summary of the restored wetland's relative success or failure per success criteria
- Photographs and descriptions of any problem areas
- Recommendations for corrective or remedial actions (if necessary)
- Description and dates of implemented corrective actions (if applicable)

5.0 RESTORATION SUCCESS CRITERIA

Success criteria variables are essential to evaluating the restored wetland. The success of the restored wetland will be based on the re-establishment of hydrology and hydrophytic vegetation and the management of noxious weeds.

5.1 Wetland Hydrology

Wetland hydrology will be restored following the removal of the fill materials. Indications of hydrology observed during the monitoring visits will indicate success for the restored wetland. Indications of hydrology will also be compared to adjacent wetlands.

5.2 Hydrophytic Vegetation

Hydrophytic vegetation will be deemed successful when these species comprise greater than 50 percent of areal coverage and be considered dominant species within the observation points. The percent of bare soil will also decrease as vegetation is re-established. Percent bare soil should be considered successful when it comprises less than 15 percent of areal cover.

5.3 Noxious Weed Coverage

Noxious weeds in and around the restored wetland will be evaluated and overall coverage will be determined. Management of noxious weeds will be implemented by request if restoration success criteria goals are not met. Noxious weed coverage should be considered successful when it comprises less than 10 percent of areal coverage.

6.0 RESTORATION CONTINGENCY MEASURES

The RV Resort anticipates that the success criteria variables will be met with the proposed restoration of the wetland. However, contingency measures may be necessary to correct unforeseen problems and provide remedial actions for the restored wetland. The RV Resort will be responsible to provide remedial actions.

Contingencies are based on the success criteria variables of the monitoring plan and provide methods to correct potential problems. Potential situations and contingencies are described below. Not all future problems can be foreseen; therefore, additional contingencies may need to be developed and implemented to remediate the situation. Prior to any contingency measure being implemented, an evaluation of the situation and consultation and coordination with the EPA will take place to determine the appropriate course of action.

6.1 Vegetation Contingency Measures

Contingency measures for wetland vegetation may involve the following actions:

- Physical control (i.e., mowing, haying, or grazing after the nesting season)
- Reseeding
- Additional seeding

Physical control methods will be implemented if the vegetation success criteria variables are not met during the monitoring period.

6.2 Wetland Hydrology Contingency Measure

Contingency measures for wetland hydrology may involve the following actions:

- Additional removal of fill materials
- Removal of sedimentation or erosion materials

This action will be implemented if the wetland hydrology success criteria variable is not met during the monitoring period. Hydrologic conditions will be compared with nearby wetlands of similar size and class.

7.0 INSPECTIONS

The restoration site and activities will be available for inspections by EPA personnel.

8.0 SCHEDULE

The removal of fill materials and restoration of the impacted wetland is of high priority so restoration activities will commence immediately upon acceptance of the restoration plan and receiving the notice to proceed. It will take approximately 45 days to finish the restoration activities so it is essential to start soon in order to beat the onset of winter weather. The anticipated completion of the restoration is prior to November 15, 2013. Monitoring reports are anticipated to be submitted for review within 45 days of the monitoring effort.

Anticipated schedule:

- Construction staking / Implementation of erosion control structures - September 30, 2013 or sooner if notice to proceed is received earlier
- Commence removal of fill materials - September 30, 2013 or sooner if notice to proceed is received earlier
- Completion of final grading and removal of fill materials - prior to November 15, 2013
- Completion and submittal of "As-built plans" - prior to November 15, 2013
- Seeding of restored wetland - prior to November 15, 2013
- Seeding of graded slopes adjacent to restored wetland - Spring 2014 (between May 1 and June 15)
- Biannual Monitoring - June and August 2014 and 2015 (subsequent reports submitted within 45 days of monitoring effort)
- Annual Monitoring - August 2016 - 2018 (if necessary), (subsequent report submitted within 45 days of monitoring effort)

RV Resort reserves the right to modify the anticipated schedule if unforeseen problems or inclement weather occurs.

9.0 REFERENCES

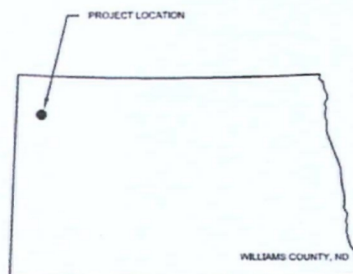
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- Cowardin, L.M., V. Carter, F.C. Golet, E.T. LaRoe. 1979. Classification of wetlands and deepwater habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. Jamestown, ND: Northern Prairie Wildlife Research Center Online. <http://www.npwrc.usgs.gov/resource/wetlands/classwet/index.htm> (Version 04DEC1998). Accessed May 2013.
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Appendix A

Figures

WETLAND RESTORATION
PLAN DRAWINGS
WILLISTON VILLAGE RV RESORT
BRUNINI FIRM

SECTION 24, T155N, R101W
WILLIAMS COUNTY, NORTH DAKOTA

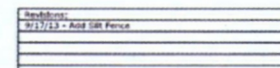


LOCATION MAP
NO SCALE



SHEET INDEX

- | | |
|---|---------------------|
| 1 | COVER SHEET |
| 2 | OVERALL VIEW |
| 3 | EXISTING CONDITIONS |
| 4 | GRADING PLAN |
| 5 | CROSS-SECTION |



I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of North Dakota.

Kirk L. Page
Date 9/10/2013 Reg. No. PE-8682

BRUNINI FIRM
190 East Capitol Street
Jackson, Mississippi, 39201

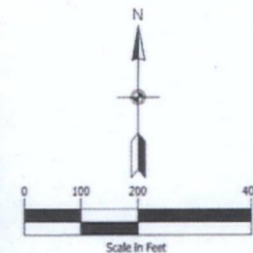
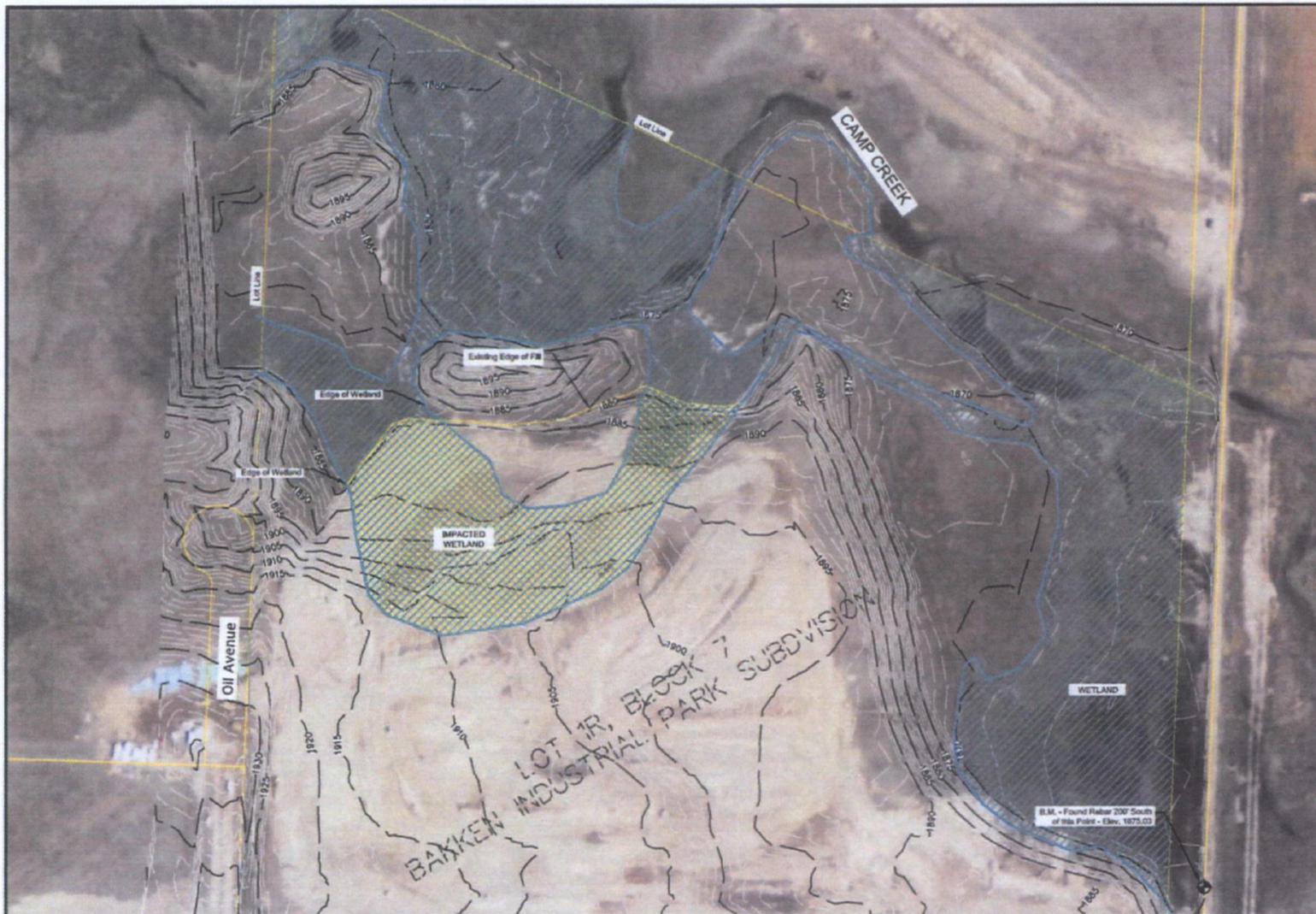
**WILLISTON VILLAGE
RV RESORT**
Williams County, North Dakota

WETLAND RESTORATION
COVER SHEET

Project No. 4710

1 of 1

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LEGEND

- 1800 CONTOUR (EXISTING)
- [Blue hatched box] WETLAND
- [Yellow hatched box] IMPACTED WETLAND

NOTES

1. CONTOURS SHOWN WERE DERIVED FROM FIELD TOPOGRAPHY SHOT 6/5/2013.
2. 2012 NAMP AERIAL PHOTOGRAPHY SOURCE DATA.



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I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of North Dakota.
Kirk L. Pope
Kirk L. Pope
Date 9/10/2013 Reg. No. PE-8682

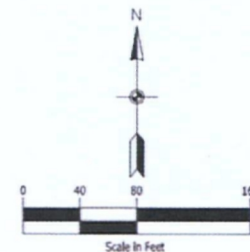
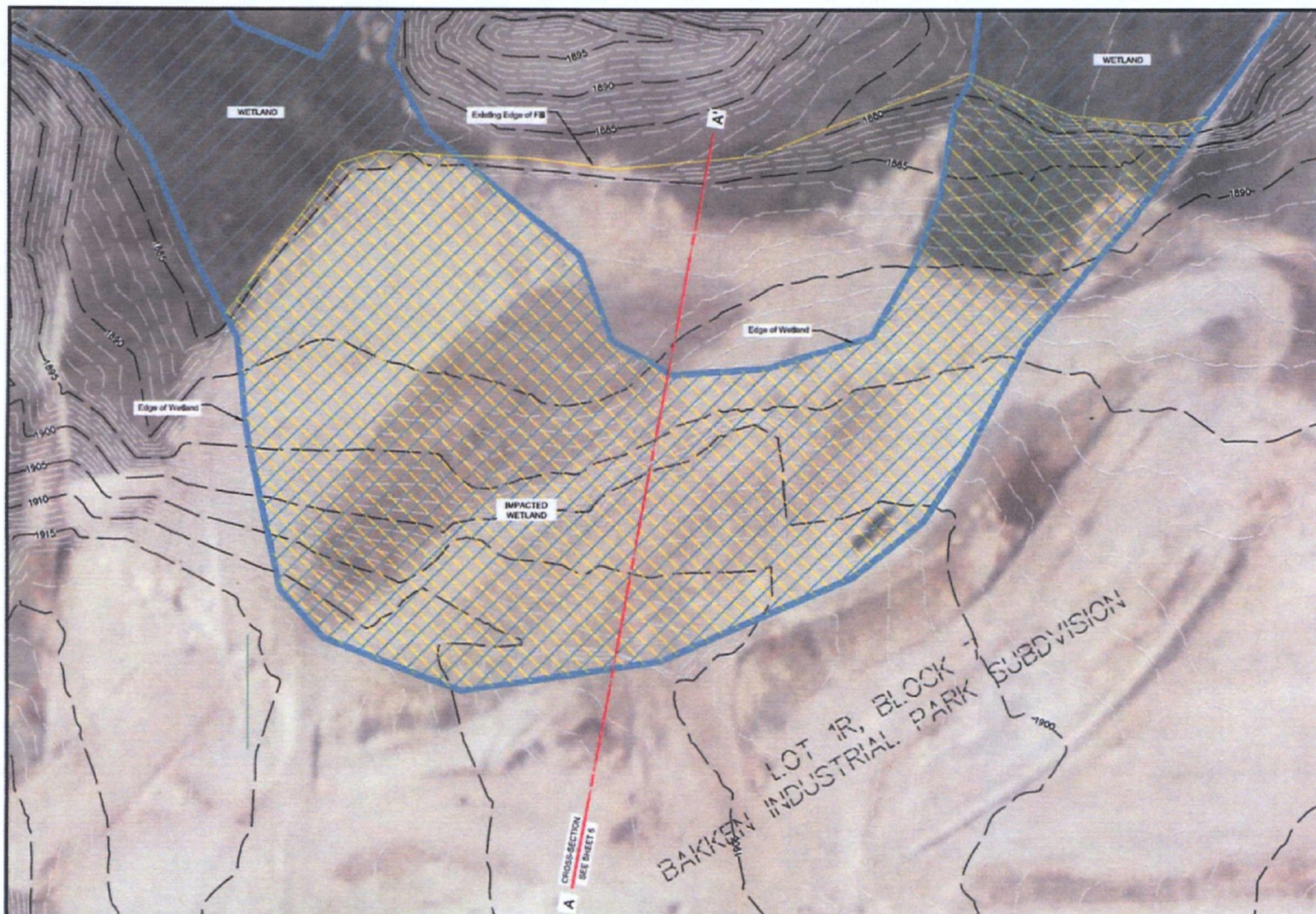
BRUNINI FIRM
190 East Capitol Street
Jackson, Mississippi, 39201

**WILLISTON VILLAGE
RV RESORT**
Williams County, North Dakota

**WETLAND RESTORATION
OVERALL VIEW**

Project No. 4789

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of
5



LEGEND

- 1850 CONTOUR (EXISTING)
- WETLAND
- IMPACTED WETLAND

NOTES

1. CONTOURS SHOWN WERE DERIVED FROM FIELD TOPOGRAPHY SHOT 6/6/2013.
2. 2012 NMP AERIAL PHOTOGRAPHY SOURCE DATA.



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I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of North Dakota.
Kirk L. Page
Date 9/10/2013 Reg. No. PE-6682

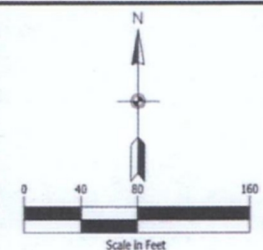
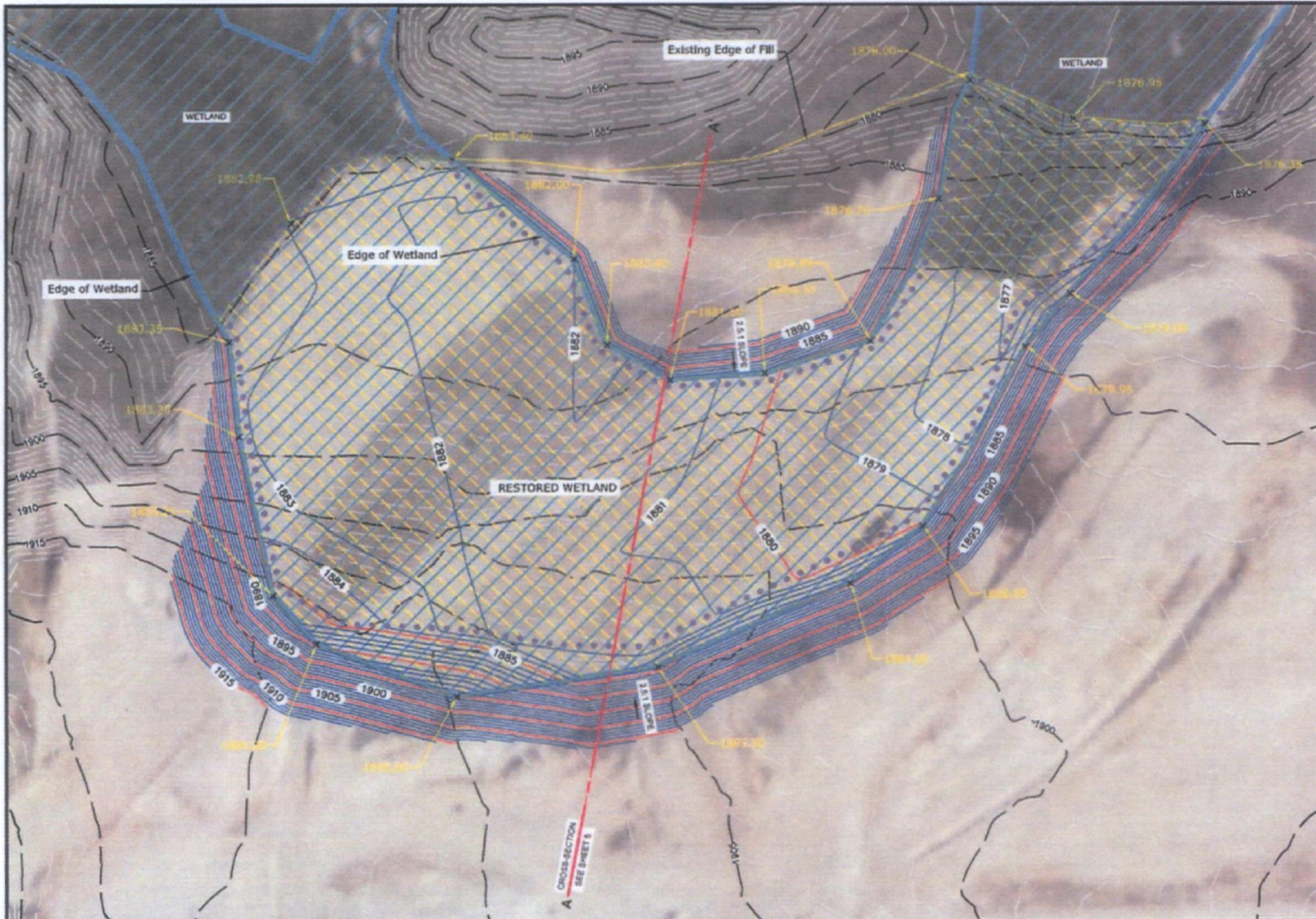
BRUNINI FIRM
190 East Capitol Street
Jackson, Mississippi, 39201

**WILLISTON VILLAGE
RV RESORT**
Williams County, North Dakota

**WETLAND RESTORATION
EXISTING CONDITIONS**

Project No. 4780

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of
5



LEGEND

- 1880 CONTOUR (EXISTING)
- WETLAND
- RESTORED WETLAND
- 1870 CONSTRUCTED CONTOUR
- • • • • PROPOSED SILT FENCE

NOTES

1. CONTRACTOR SHALL FIELD VERIFY ALL COORDINATES AND ELEVATIONS PRIOR TO STARTING CONSTRUCTION. DEVIATIONS FROM THESE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE GRADING.
2. 2012 NAIP AERIAL PHOTOGRAPHY SOURCE DATA.
3. SEED ALL DISTURBED AREAS.
4. CONSTRUCTED CONTOURS SHOWN WITHIN THE IMPACTED WETLAND BOUNDARY ARE BASED ON THE 2012 SBL GRADING PLAN, WHICH REPRESENT THE BEST AVAILABLE EVIDENCE OF THE ORIGINAL GROUND ELEVATION BEFORE FILL BEING PLACED ON THE WETLAND. CONTRACTOR SHALL EXCAVATE TO THE ORIGINAL GROUND ELEVATION AS DETERMINED BY ON-SITE OBSERVATION BY QUALIFIED PERSONNEL DURING EXCAVATION OPERATIONS, REGARDLESS OF THE ELEVATIONS SHOWN HEREON.



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I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of North Dakota.
KJR K. Pape
 Date 9/10/2013 Reg. No. PE-8682

BRUNINI FIRM
 190 East Capitol Street
 Jackson, Mississippi, 39201

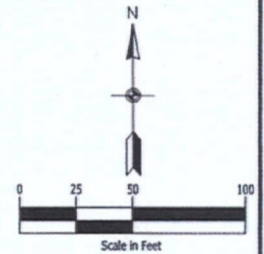
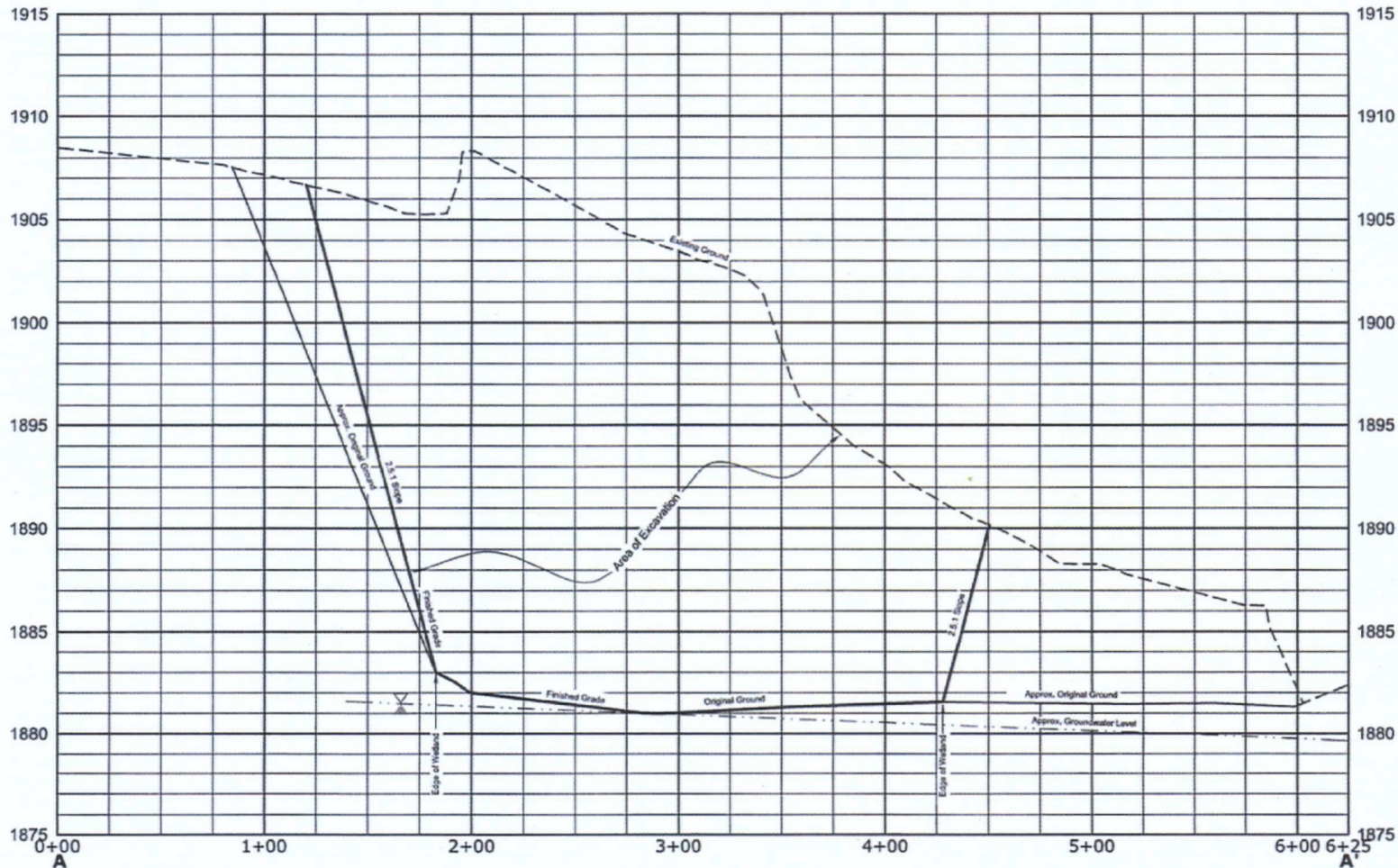
**WILLISTON VILLAGE
 RV RESORT**
 Williams County, North Dakota

**WETLAND RESTORATION
 GRADING PLAN**

Project No. 4789

4
 of
 5

CROSS-SECTION A-A'



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 Date 9/10/2013 Reg. No. PE-8682
 Kirk L. Page

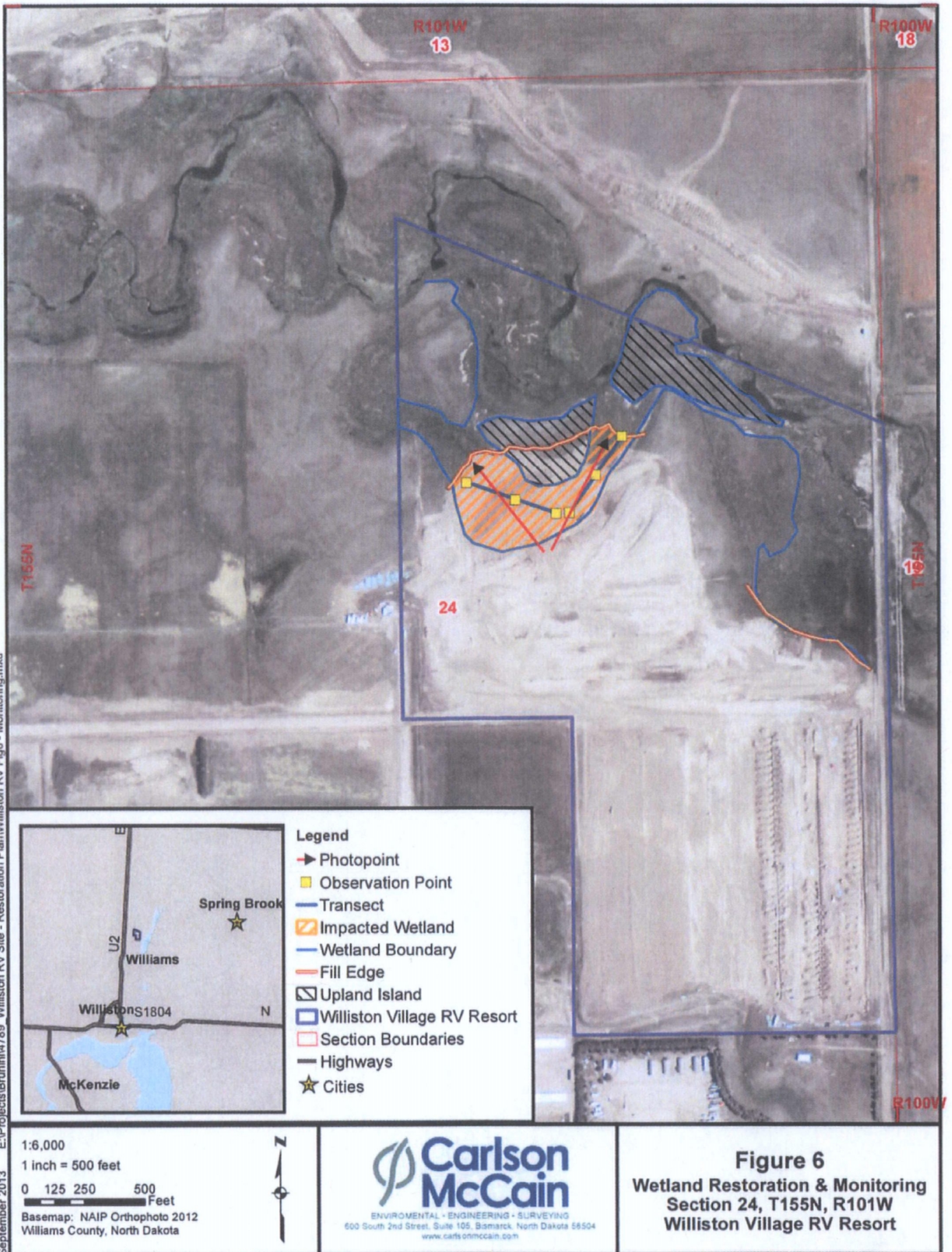
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**WILLISTON VILLAGE
 RV RESORT**
 Williams County, North Dakota

**WETLAND RESTORATION
 CROSS-SECTION A-A'**

Project No. 4789

5
 of
 5



Appendix B

Storm Water Pollution Prevention Plan



1. Set fence shall be installed before any earth removal or excavation takes place.
2. Set posts maximum 8 feet on center and excavate 6"x6" trench upslope along the line of posts.
3. Attach filter fabric to posts and extend it into trench.
4. Backfill and compact excavated soil.

(NO SCALE)



NOTES

1. ALL DISTURBED AREA TO BE HYDROSEEDING UPON COMPLETION OF FINAL GRADING OF THE SITE AREA.
2. ALL TOPSOIL OR NATIVE MATERIAL PILES MUST BE LOCATED 200 FEET FROM ANY SURFACE WATER.
3. ALL RIPRAP WILL BE PLACED WITHIN 24 HOURS OF PLACEMENT OF THE PIPES.
4. SEDIMENT BASINS SHALL BE IN PLACE PRIOR TO PLACEMENT OF THE STORM SEWER SYSTEM.
5. ROUGH GRADING OF THE SITE WILL DIVERT ALL STORM WATER TO THE SEDIMENT BASINS SHOWN.

QUANTITIES:

SALT FENCE - 4,360 LF

DESIGN WJ PROJ. NO. 2125
 DRAWN WJ DATE 07/10/13
 CHECKED WJ SURVEYED DJA



WILLISTON, NORTH DAKOTA

WILLISTON VILLAGE MOBILE HOME PARK
STORM WATER PROTECTION PLAN (SWPP)

SHEET	
1	